789 Phil. 142

SECOND DIVISION

[G.R. No. 219627, July 04, 2016]

NATIONAL POWER CORPORATION, PETITIONER, VS. SOUTHERN PHILIPPINES POWER CORPORATION, RESPONDENT.

D E C I S I O N

LEONEN, J.:

This Petition for Review on Certiorari [1] assails the Court of Appeals' (a) February 20, 2015 Decision [2] affirming the Energy Regulatory Commission's Decision, [3] and (b) July 24, 2015 Resolution [4] denying reconsideration.

On October 26, 1996, the consortium of ALSONS Power Holdings Corporation and TOMEN Corporation entered into an Energy Conversion Agreement[5] with the National Power Corporation for a 50-megawatt bunker- C fired diesel-generating power project in General Santos City.[6]

Under the Energy Conversion Agreement, the consortium will design, build, and operate a bunker-C fired diesel-generating power station (Power Station),[7] which will convert the fuel supplied by the National Power Corporation into electricity that will, in turn, be delivered to National Power Corporation.[8]

On January 31, 1997, Southern Philippines Power Corporation assumed the obligations of the consortium to the Energy Conversion Agreement through the Accession Undertaking.[9]

The cooperation period between Southern Philippines Power Corporation and the National Power Corporation started on the day after March 18, 1998, when the Power Station was declared completed.[10] Since then until 2004, Southern Philippines Power Corporation consistently nominated 50 megawatts of the Power Station's capacity to the National Power Corporation.[11]

On February 2, 2005, Southern Philippines Power Corporation informed the National Power Corporation that it installed an additional engine with a five (5)-megawatt generating capacity.[12] Thus, from April 2005, Southern Philippines Power Corporation guaranteed to the National Power Corporation a total capacity of 55 megawatts, equivalent to 110% of the nominal capacity allowed under the Energy Conversion Agreement.[13]

In a letter dated March 24, 2008, Southern Philippines Power Corporation requested payment in the amount of P45,840,673.22, attributable to the additional 10% capacity made available to the National Power Corporation since 2005.[14]

In a letter-reply dated April 21, 2008, the National Power Corporation manifested its refusal to pay for the additional 10% capacity.[15] It claimed that it had the discretion to accept or reject Southern Philippines Power Corporation's capacity nomination if it exceeds 100% of the nominal capacity.[16]

On August 25, 2008, the parties executed a Terms of Reference and mutually agreed to submit the resolution of their dispute to the Energy Regulatory Commission.[17]

On January 6, 2009, Southern Philippines Power Corporation filed before the Energy Regulatory Commission a Petition for Dispute Resolution[18] praying that:

> it be allowed to declare a capacity nomination of 110% of the nominal capacity without the consent of N[ational] P[ower] Corporation]; that it be allowed to supplement the energy sources of the Power Station with additional engines as may be necessary without the consent of N[ational] P[ower] Corporation]; and that N[ational] P[ower] Corporation be ordered to pay unpaid fees from 2005 to 2008.[19]

The; National Power Corporation filed an Answer praying for the dismissal of the Petition, contending that:

> it can accept capacity nominations of up to 110% of the Nominal Capacity but the same should only come from the five (5) 18V38 Stork-Wartsila engines provided for in the E[nergy] Conversion] A[greement]; that S[outhern] Philippines] P[ower] Corporation] is not allowed to install additional units to meet its Contracted Capacity; and that N[ational] P[ower] Corporation] can only be held liable to pay for generated energy beyond 50 MW when the same comes from the five (5) generating units under the E[nergy] Conversion] Agreement]. [20]

On December 14, 2009, Southern Philippines Power Corporation filed a Supplemental Petition praying for payment of the unpaid fees for the period of 2005 to 2010.[21]

The Energy Regulatory Commission, in its Decision[22] dated April 1, 2013, granted Southern Philippines Power Corporation's Petition and Supplemental Petition:

> WHEREFORE, the foregoing premises considered, the petition and supplemental petition both filed by Southern Philippines Power Corporation (SPPC) are hereby **GRANTED.**
>
> Accordingly, the National Power Corporation (NPC) should pay SPPC for the contracted capacity of 55,000 kW from 2005 until 2010.
>
> Relative thereto, SPPC and NPC are directed to reconcile their accounts and submit the same, including the proposed payment scheme, within

thirty (30) days, from receipt hereof.

SO ORDERED.[23] (Emphasis in the original)

The Commission's Order [24] date June 3, 2013 denied the National Power Corporation's Motion for Reconsideration for being filed out of time.

The Court of Appeals, in its Decision [25] dated February 20, 2015, denied the National Power Corporation's Petition for Review and affirmed the Energy Regulatory Commission's April 1, 2013 Decision and June 3, 2013 Order. [26] It also denied reconsideration.[27]

Hence, this Petition was filed.

Petitioner National Power Corporation argues that the Energy Regulatory Commission should not have denied its Motion for Reconsideration. [28] Petitioner was under the honest impression that filing its motion by private courier was sufficient compliance with Rule 23, Section 1 and Rule 10, Section 4 of Resolution No. 38. [29] Unfortunately, the Energy Regulatory Commission received the Motion four (4) days after its due date and considered it filed out of time. [30]

Petitioner argues that courts should not be too strict with procedural technicalities when these do not impair the proper administration of justice, and courts should rule on the merits as much as possible.[31] Petitioner quotes Rule 1, Sections 3 and 4 of the Energy Regulatory Commission Rules, which provide for the Commission's power to issue procedural directions and the liberal construction of the rules "consistent with the requirements of justice." [32]

Petitioner explains that this case involves government funds amounting to not less than P400,000,000.00, and the Energy Regulatory Commission's late receipt of its Motion for Reconsideration should not have been sufficient reason to deny it.[33]

On the merits, petitioner argues that it should not be held liable for the dispatch of the 55-megawatt contracted capacity from 2005 to 2010.[34] Petitioner disagrees with the Court of Appeals' statement that Section 3.3 of the First Schedule of Energy Conversion Agreement does not limit Southern Philippines Power Corporation to the original five (5) generating units.[35] Petitioner contends that the provision of the First Schedule of the Agreement clearly provides for five (5) Stork-Wartsila engines as comprising the Power Station. Thus, respondent Southern Philippines Power Corporation's unilateral installation of an additional sixth engine constitutes an amendment of the Energy Conversion Agreement.[36] The provision of the First Schedule provides:

1. Project Scope:

The Contractor shall be responsible for the design, engineering, supply, construction, installation and erection, including civil works, testing and commissioning of a bunker-C fired diesel generating power station.

....
3. Extent of Works/Supply

In pursuance of its obligation under Section 1, the Contractor shall be responsible for:

3.1. Complete design, development and construction of the Power Station, consisting of 5 x 18V38 Stork-Wartsila engines with Black Start capability.
....
3.3. Electro-Mechanical Works

Supply, installation/erection, tests and commissioning to put into operation the required number of generation units and its corresponding minimum net capacity of 50,000 kW. [37]

Petitioner argues that the installation of the sixth engine changes the definition of nominal capacity under Article I of the Energy Conversion Agreement, "which is 50,000 [kilowatts] measured at the high voltage side of the main power transformers."[38] The additional engine would make the nominal capacity equivalent to 55 megawatts and would result in a distortion of the formula since the 110% nomination would then be based on the increased nominal capacity, and 110% of 55 megawatts or 60.5 megawatts is way beyond what the Energy Conversion Agreement provides.[39]

Petitioner likewise submits that:

> Thus, the original five (5)-engine configuration of the power station is more than sufficient to produce 50 MW or to nominate 110% thereof which is 55 MW since the combined name plate rating of the 5 engines is 56.7 MW. To unilaterally add a 6 th engine seven (7) years after the execution of the E[nergy] Conversion] Agreement] just to make certain that it can produce 110% of the nominal capacity is definitely not contemplated by the E[nergy] Conversion] Agreement].[40]

Petitioner argues that it is only liable to pay for energy beyond 50 megawatts when the additional five (5) megawatts comes from the five (5) generating units under the Energy Conversion Agreement that has a total capacity of 56.7 megawatts. Further, this is an added incentive for respondent to keep these engines in good running order and to comply with the operating parameters provided by the Energy Conversion Agreement Schedules.[41]

From 1998 to 2004, respondent consistently nominated and demonstrated 50-megawatt nominal capacities, which is petitioner's main requirement. It was only in 2005 when respondent unilaterally installed a sixth engine, without petitioner's prior consent, that it began nominating a 55-megawatt nominal capacity. Petitioner accepted the nomination, but on the condition that it be tested using the original five (5)-engine configuration of the plant.[42]

Petitioner prays for the reversal of the Court of Appeals Decision and Resolution, and "that judgment be rendered ordering NPC to pay only for the tested capacity actually demonstrated using the original five engines for the period 2005 to 2010 as shown in the joint test certificates issued for said periods." [43] It submits that the "amount should be based on the actual net kW capability of the power station actually demonstrated and tested based on its original configuration of five engines":[44]

Test Period	Tested Capacity For Five (5) Engines
April 19, 2005	52,754.94 kW
December 28, 2006	51,517.81 kW
April 27, 2007	51,558.40 kW
November 4, 2008	50,943.37 kW
October 22, 2009	52,882.83 kW
June 16,2010	49,989.45 kW[45]

In its Comment, [46] respondent submits that the Petition is "an obvious attempt by the N[ational] P[ower] Corporation] to have this Honorable Court review or re-examine the factual findings and resulting conclusions of the E[nergy] R[egulatory] C[ommission] (which has been affirmed by the Court of Appeals) in a Rule 45 petition." [47]

Respondent argues that the Petition, even if considered, should still be denied for lack of merit.[48] The Motion for Reconsideration before the Energy Regulatory Commission was filed out of time—that is, four (4) days after the deadline—rendering the Energy Regulatory Commission Decision final and executory. [49] Outright dismissing the Petition would be in line with the immutability of judgments. [50] Respondent contends that justice would be best served if petitioner were ordered to satisfy its contractual obligations, and not evade them by merely invoking that over P400,000,000.00 in government funds are involved. [51]

Respondent asserts that even assuming that the Energy Regulatory Commission Decision has not attained finality, the Petition still does not merit its reversal.[52] It argues that it is "not contractually prohibited under the E[nergy] Conversion] Agreement] to supplement the energy sources of the Power Station with additional engines."[53]

Respondent quotes provisions from the Energy Conversion Agreement to support its contention that it "may nominate a Contracted Capacity of up to, but not exceeding, 55,000 [kilowatts] in any year without securing [petitioner] 's consent."[54] As found by the Energy Regulatory Commission, "it is not incumbent upon [petitioner] to decide on the number of engines that will be utilized in producing the required capacity, for so long as the same produces the required capacity."[55] Moreover, "Section 3.3 of the First Schedule of the E[nergy] Conversion] Agreement] clearly does not limit [respondent] to the original five (5) generating units but in fact allows